

**REMARKS**

Claims 1-55 and 58-67 are pending in the application.

Claims 1-55 and 58-67 stand rejected.

Claims 1, 6, 16, 19-23, 33-34, 44-45, 55 and 58 have been amended.

Claims 4-5, 24, 35, 46 and 59 have been cancelled.

**Rejection of Claims under 35 U.S.C. § 102**

Claims 1-3, 6-14, 16, 17, 19, 20, 22, 23, 25-31, 33, 34, 36-42, 44, 45, 47-53, 55, 58 and 60-66 stood rejected under 35 U.S.C. § 102(e) as being anticipated by Gupta, et al., U.S. Patent No. 6,763,384 (Gupta). Applicants respectfully submit that the foregoing rejection is overcome in light of the amendments made hereby, given the comments made in the Office Action with regard to the second set of rejections in the following section

**Rejection of Claims under 35 U.S.C. § 103**

Claims 15, 18, 32, 43, 54 and 67 stood rejected under 35 U.S.C. § 103(a) as being unpatentable over Gupta, et al., U.S. Patent No. 6,763,384 (Gupta) in view of Boyle, et al., U.S. Patent No. 6,138,158 (Boyle). Applicants respectfully submit that the foregoing rejection is overcome in light of the amendments made hereby, given the comments made in the Office Action with regard to the following rejections.

Claims 4, 5, 21, 24, 35, 46 and 59 stood rejected under 35 U.S.C. § 103(a) as being unpatentable over Gupta, et al., U.S. Patent No. 6,763,384 (Gupta) in view of Omoigui, U.S. Patent No. 6,694,352 (Omoigui).

While not conceding that the cited references qualify as prior art, but instead to expedite prosecution, Applicants have chosen to respectfully disagree and traverse the rejections as follows. Applicants reserve the right, for example, in a continuing application, to establish that the cited references, or other references cited now or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed.

In order for a claim to be rendered invalid under 35 U.S.C. § 103, the subject matter of the claim as a whole would have to be obvious to a person of ordinary skill in the art at the time the invention was made. *See* 35 U.S.C. § 103(a). This requires: (1) the reference(s) teach or suggest all of the claim limitations; (2) there must be some teaching, suggestion or motivation to combine references either in the references themselves or in the knowledge of the art; and (3) there must be a reasonable expectation of success. *See* MPEP 2143; MPEP 2143.03; *In re Rouffet*, 149 F.3d 1350, 1355-56 (Fed. Cir. 1998).

As to the references teaching (and, in fact, Applicants respectfully submit failing to teach) all of the claim limitations, Applicants respectfully offer the following. Amended independent claim 1 now reads as follows:

1. A method for communicating comprising:  
controlling a user interface presented by a web browser comprising:  
causing a web server to push an asynchronous message to the web browser in  
response to an incoming event, wherein  
the incoming event is an event other than a request for information from  
the web server,

the web browser presents a user interface change in response to the asynchronous message, and  
the incoming event is received by a communication server;  
causing the web browser to provide a wait request to the web server, the wait request being associated with the web browser;  
identifying a source of the asynchronous message; and  
associating the wait request with the source, wherein the associating identifies the web browser as a recipient of the asynchronous message.

(Emphasis supplied)

As can be seen, amended independent claim 1 (as well as comparable limitations of the remaining independent claims) recites that the incoming event is an event other than a request for information from the web server, and now additionally recites causing, identifying and associating actions.

Gupta, by contrast, is directed to an event-triggered notification over a network, and more specifically to:

“Internet services that rely on the transfer of real-time information have proliferated in recent years. Given the amount of information generated on the Internet, a user may request to be notified whenever particular information becomes available, such as the current highest bid in an on-line auction. The user enrolls [*sic*] to receive one or more messages and sends a list of desired messages through a client process running on the user's computer system. When the user is ready to receive messages, the client process connects to a notification server and

provides its receiving address identifier. It then disconnects from the notification server and waits for messages. A message monitor detects the occurrence of events that trigger notifications, and informs the notification server of the event. The notification server determines the appropriate recipient for the notification, and sends it using a server-initiated end-to-end message transfer mechanism to the clients' receiving address identifiers. The notification can also be used as a control signal to control one or more applications, or to control an appliance remotely over a network. The notification server may make use of load-sharing devices or proxy servers to distribute the notification to the client processes.” (Gupta, Abstract)

Omoigui, also by contrast, is directed to a system for notifying clients concerning live electronic presentations, and more specifically to:

“Methods and systems for enabling users to register for notifications pertaining to electronic presentations of interest are described. The inventive methods and systems enable users to monitor many different electronic presentations without physically connecting to them for continuous play. Users can opt to monitor for the occurrence of an electronic presentation itself, or for events that might occur within various electronic presentations. The events can be monitored live through the use of meta information that is generated as the electronic broadcast is about to be, or is being broadcast. The meta information can be generated manually or automatically.” (Omoigui, Abstract)

As will be appreciated, unlike the portions of Gupta cited in the Office Action, the incoming event is not intended to cause a server to generate an indication of a message's receipt, but to indicate the fact that the web browser is now available for having an asynchronous message pushed thereto. In contrast (although Applicants do not concede that such is taught by Gupta, let alone in an enabling manner), the Office Action posits that Gupta teaches the asynchronous pushing of information from a server. Thus, the Office Action incorrectly equates an indication of a message's receipt to the asynchronous pushing of information from a server, a position with which Applicants respectfully, if stridently, disagree.

As noted, and as is now recited in the independent claims, the claimed invention merely notifies the claimed web server of the claimed web browser's availability to receive information pushed from the claimed web server. The claimed web browser does not, and indeed need not, make any request for information from the claimed web server. Instead, the claimed web browser merely notifies the claimed web server of the claimed web browser's availability to receive information pushed from the claimed web server.

Neither the claimed web browser, nor any other portion of the claimed invention, need perform any request for information from the claimed web server, in order to receive the requisite information. Having notified the claimed web server of the claimed web browser's availability, the claimed web server simply receives information is pushed from the claimed web server. The distinction between the claimed invention and Gupta is thus clear: the claimed web browser, having not requested information from the claimed web server, simply receives information asynchronously pushed from the claimed web server. This is in marked contrast to the system of Gupta, which requires the receipt of a message that then leads to the provision of

an indication. Moreover, nowhere in Gupta is there shown, taught or suggested the claimed capability of a web browser to moderate information asynchronously pushed from a web server.

This is, in fact, an advantage of the claimed invention, in that, once the claimed web server is notified, the claimed web browser need not be concerned about when information is available, since that information is sent to the claimed web browser without any action on the part of the claimed web browser. In Gupta's system, to be updated in a timely manner, Gupta's host must first make receive a message to begin the flow of information from the server. If any information is available from the server in an asynchronous manner (such that Gupta's host does not know *a priori* when that information will be available), Gupta's host must await the receipt of a message, with all the attendant disadvantages of doing so. In the claimed invention, the information is simply pushed asynchronously from the claimed web server to the claimed web browser, as soon as the information is ready to be sent by the web server to the claimed web browser. The claimed web browser need receive no outside information in order for the claimed web server to generate and asynchronously push information to the claimed browser. And if the web browser needs the web server to wait to send information, the claimed web browser is capable of causing such actions to be taken.

Applicants respectfully note that Omoigui is neither intended to cure this infirmity of Gupta, nor successfully does so. As will be appreciated, Omoigui is not cited in this regard because such need has not heretofore been appreciated in the foregoing prosecution of the instant claims, nor would Applicants expect such, as Omoigui does not teach such a limitation, insofar as Applicants have been able to discern.

Applicants respectfully submit that the Office Action therefore fails to establish the presence of these limitations in Gupta or Omoigui, alone or in permissible combination. As will

be appreciated, the burden is on the Office to support a case of obviousness, including whether the prior art references teach or suggest all of the claim limitations. *See* MPEP 706.02(j). Thus, for the reasons presented above, neither Gupta nor Omoigui, alone or in combination, teach these limitations of the instant independent claims.

Moreover, while Applicants respectfully agree with the position stated in the Office Action that elements of the claims regarding the web browser's provision of a wait request and that wait request's handling, for example, as claimed in claim 1, in pertinent part:

causing the web browser to provide a wait request to the web server, the wait  
request being associated with the web browser;  
identifying a source of the asynchronous message; and  
associating the wait request with the source, wherein the associating identifies the  
web browser as a recipient of the asynchronous message

This is because, given that Gupta fails to recognize the need to allow a web server to generate indications independently (and so fails to comprehend asynchronously pushing information to a web browser, by definition), allowing a web browser to provide a wait request to a web server makes no sense, unless the web server is asynchronously pushing information to the web browser. The Office Action states that Omoigui purportedly "... teaches a similar system for providing notifications comprising: identifying a source of a message and associating the source of the message with a user as a recipient of the message (Col 9, lines 13-25; Col 11, lines 15-29)." (Office Action, pp. 10-11) As an initial matter, there is no teaching in either of Gupta or Omoigui of:

- 1) causing any server to wait in providing any information whatsoever;
- 2) a web browser that sends a message to cause a server to wait; or
- 3) the need for such control in the case of information being asynchronously pushed from a web server to a web browser.

Applicants therefore again respectfully note that Gupta suffers from infirmities that are not, and would not be expected by one of skill in the art, to cure.

In addition, Applicants also respectfully submit that the Office Action fails to satisfy the burden of factually supporting the alleged motivation to combine the two references. The burden of factually supporting the alleged motivation may not be satisfied by engaging impermissible hindsight; any conclusion of obviousness must be reached on the basis of facts gleaned from the references. Evidence must therefore be provided to suggest the combination and "[b]road



conclusory statements regarding the teaching of multiple references, standing alone, are not ‘evidence.’” *See In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Further, the Office Action does not establish that such a combination of the teachings of these references would meet with success, also as required.

Gupta, as noted, is directed to an event-triggered notification over a network. In so doing, a message monitor detects the occurrence of events that trigger notifications, and informs the notification server of the event. The notification server determines the appropriate recipient for the notification, and sends it using a server-initiated end-to-end message transfer mechanism to the clients' receiving address identifiers. Thus, Gupta provides a complete and standalone solution to passing on indications.

Omoigui, as also noted, is directed to a system for notifying clients concerning live electronic presentations. Omoigui's system and method allows a user to register for notifications pertaining to electronic presentations of interest. Such a system is said to enable users to monitor many different electronic presentations without physically connecting to them for continuous play. Omoigui posits that its system and method can then be used to events can be monitored live through the use of meta information that is generated as the electronic broadcast is about to be, or is being broadcast. Omoigui's system and method are directed to such ends, and if Omoigui's disclosure meets such needs in a complete and standalone manner, with no need for further modification (whether to include Gupta's disclosure, or otherwise).

The Office Action posits that the motivation that one of skill in the art would find to combine the disclosures of Gupta and Omoigui because:

“... the teachings of Omoigui to identify the source and associating the source of the message with a user as a recipient of the message would improve the system of Gupta by distinguishing messages received from different sources and determining which clients needs to be send [sic] notifications (Col 11, lines 22-27).” (Office Action, p. 11)

Without even the need to reach the question of whether the above is actually taught by Gupta and/or Omoigui, or whether such provides adequate motivation to combine their disclosures, Applicants respectfully assert that such a teaching suffers from at least two infirmities. First, such an advantage (even if such exists, which Applicants do not concede), the distinguishing of one indication from another in no way teaches the claimed control over information being asynchronously pushed from a web server to a web browser, by the web browser. Second, Applicants are at a loss as to why the system of Gupta would derive any benefit from the ability to make such a distinction.

Applicants therefore respectfully submit that such an argument fails to establish a *prima facie* case of obviousness and runs perilously close to a forbidden hindsight analysis of the references. The Office Action makes no showing of a motivation to combine Gupta with Omoigui from within the references themselves; therefore, it must be presumed that there is none. It is well-established that the best defense to hindsight is a “rigorous application of the

requirement for a showing of a teaching or motivation to combine the prior art references.” See *Ecolchem, Inc. v. Southern California Edison Co.*, 227 F.3d 1361, 1371 (Fed. Cir. 2000); *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25 (Fed. Cir. 2000). A showing of combinability must be “clear and particular” and “broad conclusive statements about the teaching of multiple references, standing alone, are not ‘evidence.’” See *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 666 (Fed. Cir. 2000); *Brown & Williamson*, 229 F.3d at 1125.

The reason, suggestion, or motivation to combine may be found explicitly or implicitly: 1) in the prior art references themselves; 2) in the knowledge of those of ordinary skill in the art that certain references, or disclosures in those references, are of special interest or importance in the field; or 3) from the nature of the problem to be solved, “leading inventors to look to references relating to possible solutions to that problem.”

*Ruiz*, 234 F.3d at 665.

Applicants respectfully submit nothing more than broad, generalized statements related to the motivation of a person of ordinary skill are presented in the Office Action, which Applicants further respectfully submit is insufficient to support a finding of obviousness. Applicants respectfully submit that the Office Action does not establish that the references which are combined are of special interest or importance in the field. Nor does the Office Action present any evidence of a problem to be solved from within those references themselves.<sup>1</sup> Instead, the Office Action fabricates such a problem to be solved, not from the teachings of the cited references, but from the teaching of Applicants’ own disclosure.

Using Applicants’ own disclosure as a blueprint for providing the motivation to combine prior art references in an obviousness determination is impermissible. See *W.L. Gore & Assoc. v.*

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<sup>1</sup> There must be a finding that “there was a disadvantage to the prior systems, such that the ‘nature of the problem’ will have motivated a person of ordinary skill to combine the prior art references.” *Id.* at 666.

*Garlock*, 721 F.2d 1540, 1552-53 (Fed. Cir. 1983) (“To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.”).

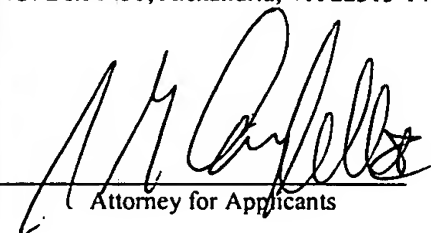
Even if there were reason to be found in Gupta and Omoigui to combine their disclosures, Applicants respectfully submit that the resulting system would fail to make obvious the claimed invention. Applicants are at a loss to explain (or even understand) how such a system makes obvious (or even contemplates) the claimed invention, which is directed to asynchronously pushing messages to a web browser in response to an incoming event, wherein the incoming event is an event other than a request for information from the web server, and allows the web browser to moderate this asynchronously pushed information from the web server is made obvious by any permissible combination of Gupta and Omoigui.

For the foregoing reasons, Applicants respectfully submit that the Office Action fails to present a *prima facie* case of obviousness of the independent claims, and all claims dependent upon them, and that they are in condition for allowance. Applicants therefore request the Examiner’s reconsideration of the rejections to those claims.

**CONCLUSION**

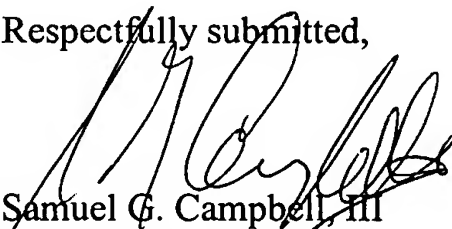
In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5084.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on May 17, 2007.

  
Attorney for Applicants

5/17/07  
Date of Signature

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